* **THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NOS: 9076, 9077, 9086 AND 12021 OF 2004
W.P.NO. 9077 OF 2004:

% 02.12.2005

Dr. A.V.S.S.Prasad, S/o Late A. Kanna Rao, Aged: about 33 years, Occ: Adhoc Lecturer in Department of Chemistry, R/o D17/4, NITW Staff Quarters, NIT Warangal.

….. Petitioner

Vs.

1. $ The Director, National Institute of Technology (Regional Engineering College) Warangal – 506004 and four others.

….Respondents.

! Counsel for the Petitioner: Sri P.V. Krishnaiah

^ Counsel for the Respondents:Sri Nooty Rammohan Rao

< Gist:

>Head Note

? Citations:

[1] AIR 1992 SC 2130
2 AIR 1990 SC 2228
3 AIR 1989 Bombay 213
4 AIR 1990 SC 371
5AIR 1989 SC 111
6AIR 2000 SC 3299
7 AIR 2002 SC 2498
8AIR 1998 SC 1477
9AIR 1993 SC 1236
10AIR 1991 SC 1286
11AIR 1997 SC 1628
12 AIR 1998 SC 101
131987 Suppl. SCC 497

[14](1990)2 SCC 396
[15] AIR 1991 SC 295
[16] AIR 1981 SC 41
[17] (2001) 5 SCC 486
[18] (1997) 6 SCC 365
[19] (1999)7 SCC 120
[20]AIR 1987 SC 2034
[21](2002)1 SCC 428
[22] (1994)2 SCC 630
[23] (1997)1 SCC 350
[24] (2003)3 SCC 485
[25] (1980)2 SCC 768
[26](2004)1 SCC 663
[27] (2003)5 SCC 437
[28] AIR 1995 SC 705
[29] AIR 1991 SC 1260

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COMMON ORDER:

Though these cases came to be listed pursuant to vacate stay petitions being filed by the respondents, both Sri P.V. Krishnaiah, learned counsel for the petitioner, and Sri Nooty Rammohan Rao, learned counsel for the respondents, would agree that the writ petitions could be finally heard and disposed of.

In all the four writ petitions adhoc lecturers, working in National Institute of Technology, (Regional Engineering College), Warangal, (hereinafter referred to as the "Institute"), question the action of the respondents in terminating their services and seek a direction that their services be regularized with all service benefits including pay scales and allowances. Since the respondents, in

this batch of writ petitions, are common and inasmuch as the reliefs sought for are similar, all the four writ petitions were heard together and are being disposed of by a common order.

It would suffice if the facts in W.P.No.9077 of 2004 are taken note of. The petitioner is an M.Sc., M.Phil., and Ph.D., in Chemistry and had qualified in the State Level Eligibility Test for Lecturership for Universities/Colleges, (Accredited by the University Grants Commission). The Principal, Regional Engineering College, Warangal, vide proceedings dated 21.11.2000, invited applications with complete bio-data for appointment to the post of lecturer in Chemistry on an adhoc basis. The Registrar, vide letter dated 03.01.2001, requested the petitioner to be present for an interview on 17.01.2001, with all original certificates, to be considered for the post of adhoc lecturer. The selection committee, consisting of the Deans, academic affairs and administration, professors and head of the department of chemistry and the Registrar of the Institute selected the petitioner, as an adhoc lecturer, from among the three candidates who attended the interview. The petitioner was informed, vide order dated 17.01.2001, that he was appointed temporarily as an adhoc lecturer in the department of chemistry of the Institute on contract basis for one year on a consolidated salary of Rs.9,000/- per month. Among the conditions stipulated in the order of appointment was that the appointment was purely temporary and liable to be terminated at any time without notice and without assigning any reasons, that the contract appointment of one year was renewable after his satisfactory completion of one

year's service, and that he would not be paid any salary during the vacation period. The petitioner joined the services, of the respondents' institute, on 25.01.2001 as an adhoc lecturer in the Department of Chemistry. Appointment of the petitioner as adhoc lecturer was extended, by order dated 30.01.2002, until further orders on a consolidated salary of Rs.10,000/- per month under the same terms and conditions. By proceedings dated 07.05.2004, services of all adhoc lecturers, including that of the petitioner, were terminated with effect from 14.05.2004 on the ground that their services were no longer required.

It is the petitioner's case that though he was working in a clear and regular vacancy, provided with quarters and entrusted with the work of a regular lecturer, he was denied the benefits of regularization of services and fixation of pay scales which amounted to exploiting his services by the respondents. Petitioner would submit that instead of being an ideal employer and regularizing the services of adhoc lecturers, thereby ensuring that the lecturers are not put on tenterhooks and are able to effectively teach students, the respondents had chosen to terminate their services for extraneous reasons. Petitioner would submit that, since there was enough work for adhoc lecturers in the respondent institution, the action of the respondents, in seeking to terminate the services of adhoc lecturers, is malafide. Petitioners would submit that the respondents had regularized the services of similarly situated persons and their action, in not extending the same benefit to the petitioner and other adhoc lecturers, was unfair, unreasonable, arbitrary and in violation of Articles 14 and

16 of the Constitution of India.

In his counter affidavit the Registrar-incharge, of the respondent institution, would state that the Government of India had conceived of establishing engineering and technological colleges all over the country with a view to maintain uniform standards of education and as a result the Regional Engineering College, Warangal came to be established. Similar institutions established in various parts of the country, with the same structure, were registered under the Societies Registration Act, to ensure participation of the state governments concerned. It is stated that the Regional Engineering College at Warangal came to be established in 1959, the first of 17 such institutions in the country. It is also stated that the Regional Engineering Colleges had a Central as well as a State tie up, that majority of students were admitted from the regions concerned, that the Regional Engineering Colleges had been maintaining high standards of education and were recognized for their quality of education and research, and that 50% of the intake of students were specifically confined to the candidates from within the state and the balance 50% were drawn from the rest of the country. Respondents would submit that a study was undertaken to further improve the standards of Regional Engineering Colleges from 1999 onwards and ultimately in 2002, the Ministry of Human Resources Development, Government of India, had taken a firm decision to permit all the Regional Engineering Colleges to manage their affairs by themselves, thereby ensuring that the Regional Engineering Colleges were not confined to serving local interests

alone and instead to take on a national hue and colour. Consequent thereto, the Regional Engineering colleges were elevated as National Institutes of Technology with a view to achieve the required standards of efficiency and improvement. Internationally followed practices and procedures were introduced. It is stated that necessary modifications had been brought about both in the system of teaching and research to be undertaken by the institute with the ultimate aim of achieving parity with the Indian Institutes of Technology, that the admission process was modified and all the seats are now filled up by an All India Common Entrance Test. It is stated that admissions, to MSc (chemistry) – Dyes, Drugs, Pharmaceuticals and pesticides course, was confined to students of Andhra Pradesh till the academic year 2003-2004. However consequent upon accreditation of the Regional Engineering College, Warangal to that of a National Institute of Technology, admissions to the course was made open to All-India competition from the academic year 2004-2005. Respondents would submit that in view of these reforms, which were under examination from 1999 onwards, the vacancies of teachers were asked not to be filled up on a regular basis. It is stated that the recruitment rules, of teaching and non-teaching staff in the National Institute of Technology, Warangal, had not been finalized earlier but were intended to be finalized shortly, and the regular process of recruitment was deferred to be taken up thereafter. It is stated that the recruitment process is to be on All-India basis and since necessary sanction had not been accorded, by the Ministry of Human Resources Development, for

filling up the posts of lecturers in the National Institute of Technology, Warangal, the posts of lecturers could not be filled up on a regular basis. It is stated that in view of these facts, the Institute was resorting to appointment of adhoc lecturers by local selection, that advertisements through limited circulation, (attracting Universities, NITs, IITs and applications from local candidates), was taken up and candidates were informed that their recruitment as adhoc lecturer would not confer on them any right much less the substantive right of regularization in the Institute. Respondents would submit that while adhoc lecturers were selected by a selection committee constituted by the institute, their selection was not by the selection committee constituted for regular selection. It is stated that around 36 adhoc lecturers were recruited in various departments and on completion of the academic year 2003-2004 (by middle of May 2004) the services of adhoc lecturers were not extended for the period beyond 2003-2004 and for the academic year 2004-2005 appropriate advertisements were taken out on an All-India basis and a selection committee was constituted for recruitment of such lecturers. It is stated that candidates who had worked earlier in the institute were also required to complete for recruitment along with other candidates for the post of adhoc lecturers/lecturers on contract basis. This procedure of filling up posts on an adhoc/ contract basis was resorted to pending clearance by the Ministry of Human Resource Development for filing up posts on a regular basis. It is stated that pursuant to the fresh selections for the academic year 2004-2005 two lecturers had been selected with

instructions to report for duty latest by 02.08.2004 and though classes had commenced from 27.07.2004, the instructional activity was to commence in all earnest by the second week of August 2004. It is stated that the services of adhoc lecturers cannot be regularized since they did not face regular selection, that a regular selection committee must comprise of one representative of the AICTE, two External subject Experts and the Director of Institute, that the selection process is undertaken on all India basis and not based on local area interests, that the petitioner had not responded to the notification for recruitment as adhoc lecturer for the academic year 2004-2005 and as a result he could not get selected and, since the petitioner had not participated in the selection process, he was not entitled to claim that he should remain continuously in service as an adhoc lecturer of the Institute. It is stated that the respondents institute had nothing against the petitioner, that the institute had not terminated his services for extraneous reasons except for the reason that selection had to be undertaken afresh to attract the best available talent in the country to form part of the faculty of the institute with a view to maintain high standards of teaching and training. It is stated that the institute had not violated any of the rights guaranteed in favour of the petitioners.

Sri P.V. Krishnaiah, learned counsel for the petitioner, would refer to the case of one Sri M. Ravindranath Reddy, who was appointed in 1995 as a Senior Research Assistant, in the Entrepreneurship Development Cell, on tenure basis for a period of one year and whose services were regularized in May 1998, to

contend that the same benefits ought to have been extended to the petitioners also. Learned counsel would submit that there is no justification for appointing persons on contract basis when regular vacancies are available and that no reasons had been assigned by the respondents for resorting to this action of terminating the services of adhoc lecturers. Learned counsel would contend that the very fact that the services of adhoc lecturers was extended until further orders gave rise to a legitimate expectation among them that their services would eventually be regularized and, as a result, the petitioners had avoided taking up other opportunities for appointment as lecturers hoping that their services would eventually be regularized in the Institute. Learned counsel would submit that while a person can be employed as an adhoc lecturer for a specified period, it is not open to the authorities to continue appointment on an adhoc basis indefinitely, and that one adhoc employee could not be replaced by another. According to the learned counsel, since the petitioners possessed the requisite qualification prescribed for being appointed as regular lecturers, even when they were initially appointed on an adhoc basis, they ought to have been appointed as regular lecturers and not on an adhoc basis. Learned counsel would submit that instead of resorting to fresh recruitment if the services of the petitioners were regularized, the respondent institute would have the benefit of fully qualified lecturers with experience of more than four years. Learned counsel would state that since only 7 of the 36 adhoc lecturers, whose services were terminated in May 2004 had approached this court and were continuing in service pursuant to

an order of *status quo* passed by this court, the respondents could regularize their services while resorting to fresh recruitment for the remaining 29 posts. Learned counsel would rely on (1) **State of Haryana Vs. Piara Singh**[1] (2) **Jacob M. Puthuparambil Vs. Kerala Water Authority**[2]; **Laxman Mahadev Teli Vs. Principal, Shri Pancham Khemraj Mahavidyalaya**[3]; (4) **Bhagwati Prasad Vs. Delhi State Mineral Development Corproation**[4]; (5) **O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd**[5]; (6) **Kiran Gupta Vs. State of U.P.**[6]; (7) **M/s. National Aluminium Co.Ltd. Vs. Deepak Kumar Panda**[7]; (8) **Arun Kumar Rout Vs. State of Bihar**[8]; (9) **Rajendra Roy Vs. Union of India**[9]; (10) **Sri Rabinarayan Mohapatra Vs. State of Orissa**[10]; (11) **Ashwani Kumar Vs. State of Bihar**[11]; (12) **Smt. Vijay Goel Vs. Union of India**[12]; (13) and **A.K. Jain Vs. Union of India**[13], in this regard.

Learned counsel would contend that while the services of adhoc lecturers were sought to be terminated on the ground that the institute intended to resort to regular recruitment, it is not the case of the respondents that other lecturers, who had hitherto been appointed on regular basis, would also be required to undergo a process of fresh selection. According to the learned counsel depriving adhoc lecturers of their right of regularization was illegal, unjust and arbitrary.

Sri Nooty Rammohan Rao, learned Counsel for the respondents, would submit that the petitioners, at the time of their initial appointment, were made aware that their appointment was only on an adhoc basis, it was not as if the petitioners were recruited by a selection process for which wide publicity was given and on the other hand, their cases were considered pursuant to a notification affixed on the notice board of the institute and by limited circulation to certain other institutes, that the selection committee, for selection of adhoc lecturers, was constituted from among the professors of the institute itself and since extension of services of the petitioners, beyond the original period of contract of one year, was also on an adhoc basis, no right accrued in their favour to claim that their services be regularized. Learned counsel would submit that with a view to further improve the academic standards of the institute, it was decided to invite applications, from all qualified lecturers, on an All-India basis and employ them on contract basis till rules are made by the Ministry of Human Resources Development for appointment of regular lecturers. According to the learned counsel, this step taken by the Director of the institute, to invite applications on an All-India basis, for the academic year 2004-2005, was only in the best interests of the institution since attracting highly qualified lecturers would result in further improving the standards of teaching in the institute and would immensely benefit students who would be imparted a far higher quality of education than before. Learned counsel would submit that the selections, which the institute carried out in 2004-2005, pending approval from the Ministry of Human Resources

Development, Government of India, for making regular appointments, was on inviting applications from all National Institutes and IITs also. According to the learned counsel, it is not a case of one adhoc lecturer substituting another, as the petitioners' adhoc appointment in 2001 was on the basis of a limited notification affixed to the notice board of the institute and intimation to a few other institutes, while the selections held in 2004 was on an All-India basis, and applications were invited from all major National institutions including the Indian Institutes of Technology. Learned counsel would submit that even this selection process in 2004 was for appointment of lecturers for a limited duration pending clearance from the Ministry of Human Resource Development and necessary rules and regulations being made for recruitment of regular and full time lecturers in the National Institutes of Technology. Learned counsel would submit that it was open to the petitioners also to participate in the selection process held in May/June 2004 and having failed to do so it was not open for them to turn around and contend that the institute should not resort to this procedure or that their services should be regularized.

Sri Nooty Rammohan Rao, on instructions, would submit that the Ministry of Human Resources Development, Government of India, had almost completed the modalities to be prescribed for appointment of regular lecturers and for the next academic year 2006-2007 the National Institutes of Technology, (the erstwhile RECs), would make recruitment only on a regular basis and the practice of engaging services of adhoc lecturers would end with the current academic year 2005-2006.

REGULARISATION OF SERVICES: ADHOC LECTURERS IN INSTITUTES OF HIGHER LEARNING.

Are lecturers appointed on an adhoc basis, in premier institutions of higher education, without undergoing a regular process of selection, entitled to seek regularization of their services on the ground that they were continued in service for more than four years? While Sri P.V. Krishnaiah, learned counsel for the petitioner, placing reliance on the aforesaid judgments, would contend that they are, Sri Nooty Rammohan Rao learned counsel for the respondents, would submit to the contrary.

Now the judgments cited across the bar.

In **Piara Singh** (1 supra), regularization of persons, working on adhoc basis in class III and class IV posts in the services of the State of Punjab and Haryana, was in issue. The Supreme Court, after referring to the earlier judgments in **Dharwad District P.W.D. Literature Daily Wage Employees Association Vs. State of Karnataka**[14] and **Jacob M.Puthuparambil** (2 supra), held that courts, while giving directions to regularize services of such employees must first ascertain the relevant facts, be cognizant of several situations and eventualities that may arise on account of such directions, take a practical and pragmatic view, (in asmuch as every such direction not only affected the public exchequer but also resulted in increasing the cadre strength of a particular service of a class or category), that the relief must be moulded having regard to the facts and circumstances of each case, that such an exercise cannot be mechanical but must be a judicial one, that it was no part of the jurisdiction of the court to issue general

declarations of indulgence and that in such cases courts could only observe that it was for the respective governments to consider the feasibility of giving appropriate relief particularly in cases where persons had been continuing for a long number of years, were eligible and qualified on the date of their adhoc appointment and whose record of service was satisfactory. The Supreme Court further held thus:

"Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of adhoc/temporary employees in government service.

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation

provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State."

I n **Jacob M.Puthuparambil** (2 supra), Rule 9(a)(i) of the Kerala State and subordinate service Rule, 1958, which enabled the appointing authority to appoint person temporarily, came up for consideration before the Supreme Court and it was held that the rule was intended to be invoked to serve emergent situations which could not brook delay, that such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones and that the rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. The Supreme Court held that once appointments continued for long, the services had to be regularized if the incumbent possessed the requisite qualifications as prescribed under the rules. The Supreme Court took note of the consequences of terminating the services of such employees, (cleaners, pump operators, drivers etc), and held thus:

"It is unfair and unreasonable to remove people who have been rendering service since some time as such removal has serious consequences. The family of the employee which had settled down and accommodated its needs to the emoluments received by the bread winner, will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered 'age barred' for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution. Therefore, if we interpret Rule 9(*a*)(*i*) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing

violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service."

In **Laxman Mahadev Teli** (3 supra) the division bench of the Bombay High Court was considering the case of a peon, who was appointed in a temporary capacity for a period of one year, in a school. It was held that a temporary employee could not be kept in suspended animation indefinitely, that it was unfair to an employee and an unwarranted privilege on an employer to keep an employee indefinitely in a temporary capacity and, irrespective of the length of uninterrupted service put in, to unceremoniously terminate the employment under the refuge that the employment was temporary. The division bench of the Bombay high court held that the length of uninterrupted service conferred the mantle of permanency and not the eternal suspense of temporariness.

In **Bhagwati Prasad** (4 supra) the petitioners were daily rated workers such as truck loading clerks, attendance keeper clerks, drillmen, fitter survey, pipe fitter, pump operator etc. The Supreme Court held that while the initial minimum educational qualification prescribed for the different posts was undoubtedly a factor to be reckoned with at the time of initial entry into the service, once appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them confirmation in the respective posts on the ground that they lacked the prescribed educational qualifications.

In **O.P. Bhandari** (5 supra), Rule 31(v) of the I.T.D.C. Rules, which enabled termination of services of an employee, by giving 90 days notice or pay in lieu thereof, came up for consideration before the Supreme Court and it was held that the said rule could not co-exist with Articles 14 and 16 of the Constitution of India. The Supreme Court held thus:

"In order to uphold the validity of the Rule in question it will have to be held that the tenure of service of a citizen who takes up employment with the State will depend on the pleasure or whim of the competent authority unguided by any principle or policy. And that the services of an employee can be terminated though there is no rational ground for doing so, even arbitrarily or capriciously. To uphold this right is to accord a "magna carta" to the authorities invested with these powers to practise uncontrolled discrimination at their pleasure and caprice on considerations not necessarily based on the welfare of the organisation but possibly based on personal likes and dislikes, personal preference and prejudices. An employee may be retained solely on the ground that he is a sycophant and indulges in flattery, whereas the services of one who is meritorious (but who is wanting in the art of sycophancy and temperamentally incapable of indulging in flattery) may be terminated. The power may be exercised even on the unarticulated ground that the former belongs to the same religious faith or is the disciple of the same religious teacher or holds opinions congenial to him. The power may be exercised depending on whether or not the concerned employee belongs to the same region, or to the same caste as that of the authority exercising the power, of course without saying so. Such power may be exercised even in order to make way for another employee who is a favourite of the concerned authority. Provincialism, casteism, nepotism, religious fanaticism, and several other obnoxious factors may in that case freely operate in the mind of the competent authority on deciding whom to retain and whom to get rid of. And these dangers are not imaginary ones. They are very much real in organisations where there is a confluence of employees streaming in from different States. Such a rule is capable of robbing an employee of his dignity, and making him a supine person whose destiny is at the mercy of the concerned authority (whom he must humour) notwithstanding the constitutional guarantee enshrined in Articles 14 and 16 of the Constitution of India. To hold otherwise is to hold that the fundamental right embedded in Articles 14 and 16(1) is a mere paper tiger and that it is so ethereal that it can be nullified or eschewed by a simple

device of framing a rule which authorizes termination of the service of an employee by merely giving a notice of termination. Under the circumstances the Rule in question must be held to be unconstitutional and void."

In **Arun Kumar Rout** (8 supra) regularization of services, of employees working in class III and Class IV posts in the health department of the Government of Bihar, was in issue. While taking note of the fact that these employees had not been appointed by following the due procedure and could not claim regularization as a matter of course, and on considering the fact that they had satisfactorily served the department even without getting any salary for a long time, they were not guilty of any fraud or sharp practice, did not lack the requisite qualifications and had been appointed against sanctioned posts, the Supreme Court held that their cases deserved humane and sympathetic consideration in getting appointment against such sanctioned posts.

In **Rabinarayan Mohapatra** (10 supra), the practice of continuing teachers in spells of 89 days each giving an artificial break of one day, to deprive them of their salary during summer vacation and other service benefits was held to be wholly arbitrary and to suffer from the vice of discrimination. The Supreme Court held thus:

"Bulk of our population is yet illiterate. Till the time illiteracy is effaced from the country the resolution enshrined in the Preamble cannot be fulfilled. Education is the dire need of the country. There are neither enough schools nor teachers to teach. Insecurity is writ large on the face of the teaching community because of nebulous and unsatisfactory conditions of service. In order to make the existing educational set up effective and efficient it is necessary to do away with adhocism in teaching appointments. An appointment on 89 day basis with one day break which deprives a teacher of his salary for the period of summer vacation and other service benefits, is wholly arbitrary and suffers from the vice of discrimination."

In **Ashwini Kumar** (11 supra), regularization of services of daily rated Class III and Class IV employees was in issue. The Supreme Court held thus:

"In this connection it is pertinent to note that the question of regularisation in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on adhoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on adhoc basis for a given substantial length of time to regularise them so that the employees concerned can give their best by being assured security of tenure. But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularisation may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent authority and the irregular initial appointment may be regularised and security of tenure may be made available to the incumbent concerned. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment. In any case back-door entries for filling up such vacancies have got to be strictly avoided. However, there would never arise any occasion for regularising the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial entry of the candidate could ever be effected. Such an entry of an employee would remain tainted from the very beginning and no question of regularising such an illegal entrant would ever survive for consideration, however competent the recruiting agency may be."

In **Smt. Vijay Goel** (12 supra), regularization of the services of lower divisional clerks was in issue. The Supreme Court, on

taking note of the fact that the employees had the requisite qualification, and posts were in existence, held that there was no reason to cancel the order of regularization of the adhoc lower division clerks, five years after their services had been regularized. The Supreme Court referred to the earlier judgment in **H.C. Puttaswamy Vs. The Hon'ble Chief Justice of Karnataka High Court**[15] wherein it was held that one could not imagine the untold misery of such employees and their families if they are left at the mid-stream, and that it would be an act of cruelty to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection. The Supreme Court held that the circumstances of the case justified a humanitarian approach and that the employees deserved justice ruled by mercy. After referring to **Baleshwar Dass Vs. State of U.P**[16], the Supreme court held thus:

> "We are also aware of the decision of this Court that there cannot be any claim for regularisation for having worked for a number of years if the regularisation was not in accordance with the rules. That is not so here. As noted above in the present case appointments were made in accordance with the Rules which appointments have continued for a number of years and cannot be treated as adhoc or fortuitous."

In **Kiran Gupta** (6 supra), Section 33-C(1)(a)(ii) of the U.P. Secondary Education Service Commission and Selection Boards Act, which provided that teachers who were appointed by promotion, between 31.07.1998 and 06.08.1993, on adhoc basis against a substantive vacancy in the post of principal or headmaster in accordance with the section, shall be given

substantive appointment by the management, was in issue. It is in this context that the Supreme Court held thus:

"……However, we deem it proper to observe that the regularisation of the candidates under Section 33-C(1)(*a*)(*ii*) is made to depend on a mere chance of a substantive vacancy either being filled in or the selection for that vacancy being completed. There may still be cases where the posts of Principals/Headmasters may be lying vacant either because the selected candidates did not join or because the incumbents having obtained posting of their choice vacated the posts or for any other reason the posts might have fallen vacant. In all such cases the benefit of Section 33-C(1)(*a*)(*ii*) has to be given to the ad hoc appointees……."

In **Deepak Kumar Panda** (7 supra), regularization of the services of a French interpreter in a public sector undertaking, who was initially appointed on a consolidated pay for a period of one year which was extended from time to time, was in issue. The Supreme Court while granting the employee two months time to produce the certificate, in proof of his educational qualifications directed that, on production of such a certificate, the employee should be appointed on a regular basis as an assistant.

In **Dr. A.K. Jain** (13 supra) regularization of adhoc assistant medical officers and replacing them by freshly recruited Assistant Divisional Medical Officers was in issue, and the Supreme Court directed that the services of these employees, appointed earlier on adhoc basis, be regularized in consultation with the Union Public Service Commission, on an evaluation of their work and conduct on the basis of their confidential reports.

The erstwhile Regional Engineering Colleges, now called the National Institutes of Technology, are Premier Institutions of higher learning with one such college being established in each

state in the country. These institutions are rated just a notch below, the Indian Institutes of Technology, in the excellent standards maintained by them in imparting technical education. Centers of higher education should constantly strive to improve excellence, higher learning, rational thinking and a scientific temper with objectivity and fairness. Since ages our culture and civilization have recognized that education is one of the pious obligations of society to be discharged by the learned and/or the State. (**Dental Council of India Vs. Subharti K.K.B. Charitable Trust**[17]). A true teacher scintillates young receptive minds with scientific thought and encourages rational thinking and makes him serve society with pride of his alma mater. (**Raj Pal Verma Vs. Chancellor of Meerut University**[18]). Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend largely on the caliber of teachers and the availability of adequate infrastructure facilities. Unless these educational facilities are provided, it would be difficult to meet with the ever increasing requirement of the younger generation to acquire the high degree of knowledge and education necessary to compete in the global market. (**Preeti Srivastava (Dr) Vs. State of M.P.**[19]**.**) The standards of higher education, including scientific and technical, need constant improvement. Coordinated action in higher education with proper standards is of paramount importance to national progress. Dissemination of learning with search for new

knowledge with discipline all around must be maintained at all costs. Democracy depends for its very a life on a high standard of general, vocational and professional education. (**Osmania University Teachers Association Vs. State of A.P**[20]).

Premier institutes have to continuously strive to achieve higher standards of academic excellence. Providing the best of facilities, and the best of teachers and selecting the best students, from across the length and breath of the country, as part of its constant endeavour to further improve its high educational standards, is undoubtedly in larger public interest.

In **AIIMS Students' Union v. AIIMS**[21] the Supreme Court held:

".....Rabindra Nath Tagore's vision of a free India cannot be complete unless "knowledge is free" and "tireless striving stretches its arms towards perfection". Almost a quarter century after the people of India have given the Constitution unto themselves, a chapter on fundamental duties came to be incorporated in the Constitution. Fundamental duties, as defined in Article 51-A, are not made enforceable by a writ of court just as the fundamental rights are, but it cannot be lost sight of that "duties" in Part IV-A are prefixed by the same word "fundamental" which was prefixed by the founding fathers of the Constitution to "rights" in Part III. Every citizen of India is fundamentally obligated to develop a scientific temper and humanism. He is fundamentally duty-bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. State is, all the citizens placed together and hence though Article 51-A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State.....In the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go-by and certainly not compromised in its entirety. Fundamental duties, though not enforceable by a writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice, people's wish as

manifested through Article 51-A, can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. Constitutional enactment of fundamental duties, if it has to have any meaning, must be used by courts as a tool to tab, even a taboo, on State action drifting away from constitutional values"

The State, and its Instrumentalities, would be justified, if not duty bound under Article 51-A, to develop a scientific temper and the spirit of inquiry among the citizens. If the respondent institution, an instrumentality of the state, in discharge of the fundamental duties under Article 51-A of the constitution of India, endeavours to achieve a higher degree of excellence by attracting the best available talent in the country to join its teaching faculty, no interference would be called for.

Considering the importance of maintaining high standards of academic excellence in such premier institutes can it be said that the action of the respondents in inviting applications on an all-India basis and thereby attracting the best available talent in the country to join the faculty of the institute is so irrational and arbitrary as to violate the equality clause in Article 14 of the Constitution of India? The answer has necessarily to be in the negative.

Petitioners were not subjected to a regular process of selection. They were appointed on the basis of an in-house selection process with the notification being affixed to the notice board and by limited circulation to a few other institutes. The very selection was for appointment on an adhoc basis. Their continuance thereafter was also on an adhoc basis, which necessarily implies that their services were intended to be continued only till a regular process of selection was undertaken.

The judgments relied on by the petitioner, in **Piara Singh** (1 supra), **Jacob. M. Puthuparambil** (2 supra), **Laxman Mahadev** (3 supra), **Bhagwati Prasad** (4 supra), **Arun Kumar Rout** (8 supra), **Aswini Kumar** (11 supra) and **Smt. Vijay Goel** (12 supra), relate to regularization of services of lower divisional clerks or employees in Class III and Class IV posts and cannot automatically be extended to teaching posts, that too in premier institutions of higher learning. **O.P. Bhandari** (5 supra) was a case of arbitrary termination of an employee and the observations made therein cannot be read, out of context, in support of a claim for regularization of services of adhoc lecturers. Similarly **Rabinarayana Mohapatra** (10 supra) was a case wherein artificial breaks in service to deprive teachers of certain other benefits was in issue and not a claim for regularization of services. **Kiran Gupta** (6 supra) was a case wherein the statutory provision, relating to regularization, was the subject matter of interpretation. Failure to produce the certificate, in proof of educational qualifications, for being regularised in service was in issue in **Deepak Kumar Panda** (7 supra). **Dr. A.K.Jain** (13 supra), which related to regularization of services of adhoc medical officers, has been held in **J&K Public Service Commission Vs. Dr. Narender Mohan**[22] to be a direction given by the Supreme Court under Article 142 of the Constitution of India, in the peculiar facts and circumstances therein.

Regularisation of services of lecturers, appointed initially on an adhoc basis, was in issue in **Dr. Narender Mohan** (22 supra) and on examining the provisions of the Jammu and Kashmir

Medical Education (Gazetted) Services Recruitment Rules, 1979, the Supreme Court held thus:

"……The Rules prescribe direct recruitment/promotion by selection as the mode of recruitment which would be done only by PSC or promotion committee duly constituted and by no other body. Therefore, adhoc employee should be replaced as expeditiously as possible by direct recruits. A little leeway to make adhoc appointment due to emergent exigencies, does not clothe the executive Government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back door adhoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. The later are the product of order and regularity. Every eligible person need not necessarily be fit to be appointed to a post or office under the State, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments……..

…..The rules or instructions should be in compliance with the requirements of Articles 14 and 16 of the Constitution. The procedure prescribed shall be just, fair and reasonable. Opportunity shall be given to eligible persons by inviting applications through the public notification and recruitment should be according to the valid procedure and appointment should be of the qualified persons found fit for appointment to a post or an office under the State. ……

…….Moreover, when the Rules prescribe direct recruitment, every eligible candidate is entitled to be considered and recruitment by open advertisement which is one of the well accepted modes of recruitment. Inviting applications for recruitment to fill in notified vacancies is consistent with the right to apply for, by qualified and eligible persons and consideration of their claim to an office or post under the State is a guaranteed right given under Articles 14 and 16 of the Constitution……..

……This Court in **Dr A.K. Jain v. Union of India (1987 Supp SCC 497)** gave directions under Article 142 to regularise the services of the ad hoc doctors appointed on or before October 1, 1984. It is a direction under Article 142 on the peculiar facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 — power is confided only to this Court……

…….In Union of India v. Dr Gyan Prakash Singh (1994 Supp (1) SCC 306, this Court by a Bench of three Judges considered the effect of the order

in A.K. Jain case and held that the doctors appointed on adhoc basis and taken charge after October 1, 1984 have no automatic right for confirmation and they have to take their chance by appearing before the PSC for recruitment. In H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka (1991 Supp (2) SCC 421 this Court while holding that the appointment to the posts of clerk etc. in the subordinate courts in Karnataka State without consultation of the PSC are not valid appointments, exercising the power under Article 142, directed that their appointments as a regular, on humanitarian grounds, since they have put in more than 10 years' service. It is to be noted that the recruitment was only for clerical grade (Class-III post) and it is not a ratio under Article 141. In State of Haryana v. Piara Singh (1992) 4 SCC 118 this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc or temporary employee. Adhoc or temporary employee should not be replaced by another adhoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. It is to be remembered that in that case, the appointments are only to Class-III or Class-IV posts and the selection made was by subordinate selection committee. Therefore, this Court did not appear to have intended to lay down as a general rule that in every category of ad hoc appointment, if the adhoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made. Thus considered, we have no hesitation to hold that the direction of the Division Bench is clearly illegal and the learned Single Judge is right in directing the State Government to notify the vacancies to the PSC and the PSC should advertise and make recruitment of the candidates in accordance with rules."

Again in **P. Ravindran Vs Union Territory of Pondicherry**[23], regularization of services of lecturers, appointed

earlier on an adhoc basis, was in issue and following the earlier judgment in **Dr Narinder Mohan**, (22 supra) the Supreme Court held that the process of regular recruitment cannot be bypassed by issuing direction for regularization of services of adhoc persons who would come to the service through back-door entry, and that inviting applications from the open market would ensure that every candidate's fundamental right to seek consideration and for selection in open competition was not violated. The Supreme Court deprecated the practice of regularization, except in extraordinary cases, in directing the government to frame a scheme and regularize Class III and IV services in accordance with the scheme.

In **Chanchal Goyal (Dr) v. State of Rajasthan**[24], the Supreme court held thus:

> "Unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularization. It is true that an ad hoc appointee cannot be replaced by another ad hoc appointee only a legally selected candidate can replace the ad hoc or temporary appointee. In this case it was clearly stipulated in the initial order of appointment that the appellant was required to make room once a candidate selected by the Service Commission is available…….
>
> ……In Union of India v. Harish Balkrishna Mahajan-(1997) 3 SCC 194 the position was again reiterated with reference to Dr Narain case: (1996) 8 SCC 454. Therefore, the challenge to the order of dismissal on the ground of long continuance as ad hoc/temporary employee is without substance."

As held in **Dr. Narinder Mohan** (22 supra) requiring the government to frame a scheme for regularization of services, a direction issued by the Supreme Court under Article 142 of the Constitution of India, cannot form the basis for a claim for a direction from the High Court, under Article 226 of the Constitution of India, to regularize the services of teaching staff, that too in premier institutions.

It is no doubt true that security of employment is necessary to enable teachers/lecturers to effectively discharge their task of imparting education. As is however clear from the counter affidavit of the respondents, this procedure of adhoc appointments was resorted to, since the necessary rules and regulations, for appointment of teaching faculty on a regular basis, is in the process of being formalized. It is in such circumstances that the National Institute of Technology, Warangal resorted to the procedure of adhoc appointments. By its very nature, such adhoc appointments are to be continued only till regular selections are undertaken. While loss of employment would certainly effect the individual employee and his family and it would not be in public interest to appoint lecturers for short spells, with the threat of termination looming large, one cannot however ignore the larger public interest involved in ensuring that the teaching faculty, in such premier institutions, is the best available in the country, for the role of teachers in improving the general standards of education and thereby ensuring excellence and allround academic growth needs no emphasis.

The public interest involved in providing security of employment, to enable a teacher to effectively discharge his duties, has to be balanced with the supervening public interest of engaging the services of the most competent teachers for imparting specialized knowledge and training to students of such premier institutions. The national interest in promoting excellence, efficiency, skill and knowledge at the highest level and providing the best talent in the country with the maximum available facilities to excel and contribute to national progress and the benefits which would thereby accrue to the society at large, has also to be borne

in mind. (**Dr. Preeti Srivastava** (19 supra). The balance to be struck and the choice to be made in this regard must be left to expert bodies and if the respondent institute intends appointing lecturers, inviting applications of an all-India basis, to ensure that the best available talent in the country joins its faculty, this court would defer to the wisdom of such expert bodies and refrain from interfering in such matters. To borrow the expression used in **Dr. Jagadish Saran Vs. Union of India**[25] and **AIIMS Students union** (21 supra) "judges should not rush in where specialists fear to tread".

Larger public interest would undoubtedly be served in achieving higher standards of academic excellence by attracting the best available talent in the country as part of the teaching faculty in institutions of higher learning. If this goal, which is in larger public interest, is to be achieved, individual interests of an employee has necessarily to give way. Petitioners request for regularization of their services is therefore rejected.

LEGITIMATE EXPECTATION:

Now the contention regarding legitimate expectation. Sri P.V. Krishnaiah, learned counsel for the petitioner, would submit that since their services were continued for more than four years, the petitioners had the legitimate expectation that their services would be regularized.

In **Chanchal Goyal (Dr)** (24 supra), the Supreme Court held thus:

"……The basic principles in this branch relating to "legitimate expectation" were enunciated by Lord Diplock in *Council of Civil Service*

Unions v. *Minister for the Civil Service: 1985 AC 374* (AC at pp.408-09) (commonly known as *CCSU case*). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (*i*) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (*ii*) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. ……."

"…….An expectation could be based on an express promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to a class of persons……."

"…..Even so, it has been held under English law that the decision-maker's freedom to change the policy in public interest, cannot be fettered by the application of the principle of substantive legitimate expectation……"

In **Howrah Municipal Corpn. v. Ganges Rope Co. Ltd.,**[26], the Supreme Court held that "settled expectation" cannot be countenanced against public interest. Again in **Union of India v. International Trading Co.,**[27] the Supreme Court held thus:-

"……. As was observed in *Punjab Communications Ltd.* v. *Union of India: (1999)4 SCC 727* the change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury reasonableness". The decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of policy is for the decision-maker and not the court. The legitimate substantive expectation merely permits the court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely legitimate expectation without anything more cannot ipso facto give a

right. Its uniqueness lies in the fact that it covers the entire span of time: present, past and future. How significant is the statement that today is tomorrow's yesterday. The present is as we experience it, the past is a present memory and future is a present expectation. For legal purposes, expectation is not same anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law……..”

“…..to strike the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the negotiation of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles……”

“……..It follows that the concept of legitimate expectation is “not the key which unlocks the treasure of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits”, particularly, when the element of speculation and uncertainty is inherent in that very concept……”

“…….If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed……”

The plea of legitimate expectation would arise where a person is deprived of some benefit or advantage which he had earlier been permitted to enjoy and which he can legitimately expect to be permitted to be continued or that he has received an assurance from the decision- maker that they will not be withdrawn without giving first an opportunity of advancing reasons for contending that they should not been withdrawn. Both these requirements are absent in the case on hand. It is not even the petitioners case that the respondents had promised to regularize their services or to

continue their adhoc appointment in perpetuity. On the other hand their initial order of adhoc appointment clearly reveals that their appointment was purely temporary and liable to be terminated at any time without notice and without assigning any reasons. Even otherwise the respondent's freedom to change the policy in public interest cannot be fettered by the application of the principle of legitimate expectation. It is undoubtedly in larger public interest to have the best available talent in the country as part of the teaching faculty of the respondent institute and in view of the larger public interest involved, the legitimate expectation of the petitioners, even if it were to be held that they have one, must necessarily yield.

DISCRIMINATION:

The plea of discrimination is based on the regularization of the services of Dr. M. Ravindranath Reddy, who was temporarily appointed in June 1995 as a Senior Research Assistant in the entrepreneurship Development Cell of the respondent college on a tenure basis for a period of one year. The services of Dr. M. Ravindranath Reddy, was regularized, vide order dated 15.11.1998, with effect from 14.08.1996 as a Senior Research Assistant in the entrepreneurship Development Cell.

Sri P.V. Krishnaiah, learned counsel for the petitioner, would contend that since the services of Dr. M. Ravindranath Reddy were regularized, the petitioners being similarly situated, should also have been given the benefit of regularization of their services. Sri Nooty Rammohan Rao, learned counsel for the respondent, would however contend that this plea of discrimination

has not been raised in the affidavit filed in support of the writ petition, but was raised for the first time in the reply affidavit and the respondents, therefore, did not have the opportunity of explaining the circumstances under which the services of Dr. M. Ravindranath Reddy came to be regularized.

While there is considerable force in this submission of Sri Nooty Rammohan Rao, the plea of discrimination must fail for other reasons as well. Regularization of the services of Dr. M. Ravindranath Reddy in 1998 was more than a couple of years prior to the initial appointment of the petitioners as adhoc lecturers. Further, regularization of the services of one individual, not in accordance with the rules and regulations, would not confer any right on other employees to claim a similar benefit nor can the jurisdiction of this court be invoked to perpetuate an illegality. (**Chandigarh Administration Vs. Jagjit Singh**[28]) In any event, the justification or otherwise of the regularization of the services of Dr. M. Ravindranath Reddy does not call for any further examination, in the present proceedings, since Dr. M. Ravindranath Reddy has not even been arrayed as one amongst the respondents in the writ petitions. The plea of discrimination therefore fails and is rejected.

MALICE:

In **Rajendra Roy** (9 supra) the Supreme Court held that it may not always be possible to establish malice, in a straight cut manner and in an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and

antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established and such inference cannot be drawn on the basis of insinuation and vague suggestions. While Sri P.V. Krishnaiah would rely on **Rajendra Roy** (9 supra) in support of his submission that the action of the respondents in resorting to this adhoc selection in May 2004 is tainted with malice, this contention does not call for further examination since the then Director of the Institute, whose action is alleged to be tainted with malice, has not been made a party to the writ petitioner eo-nominee. (**State of Bihar Vs. Shri P.P. Sharma**[29]).

RELIEF TO WHICH THE PETITIONERS ARE ENTITLED TO:

Sri P.V. Krishnaiah, learned counsel for the petitioners, would however contend that the action of the Director of the Institute in resorting to fresh adhoc selection in May 2004, in effect, amounts to replacing one adhoc employee by another and that such action has been held, in a catena of judgments of the Supreme Court, to be wholly arbitrary and in violation of Articles 14 and 16 of the Constitution of India. Sri N. Rammohan Rao, learned counsel for the respondents, would however urge that the selection process undertaken in May 2004, inviting applications from eligible candidates from all over the country, was only in order to attract the best available talent to join the teaching faculty of the National Institute of Technology, Warangal and thereby help the Institute attain higher standards of excellence, which is in larger public interest.

Though other candidates were selected for appointment,

pursuant to the selections held in May/June 2004, the petitioners were continued as adhoc lecturers in view of the interim orders of *'status quo'* passed by this court. The petitioners have been working as adhoc lecturers, in view of the interim orders, not only during the academic year 2004-2005 but in the academic year 2005-2006 also.

While the bonafides, of the selection process held in May 2004, is not in question, the fact remains that in view of the interlocutory orders of *status quo* passed by this court, the petitioners have continued to remain in service not only for the academic year 2004-2005 but also for the current academic year 2005-2006. In view of the submission of Sri Nooty Rammohan Rao, learned counsel for the respondents, that the institute has decided to put an end to the engagement of lecturers on adhoc basis and that regular selections would be made, on framing of the necessary rules and regulations, before the commencement of the academic year 2006-2007, I deem it appropriate to direct the respondents to continue the petitioners herein in service as adhoc lecturers till regular selections are made and the posts of lecturers, which are currently held by the petitioners on an adhoc basis, are filled up by making regular appointments thereto. Needless to state that this order shall not preclude the petitioners, if they are so eligible, from also participating in the selection process for regular appointment of lecturers in the respondent institution, as and when they are held.

The writ petitions are accordingly disposed of. There shall however be no orders as to costs.

Date: .11.2005

RAMESH RANGANATHAN, J

Note: L.R.copy to be marked

B/o

MRKR

[1] AIR 1992 SC 2130

[2] AIR 1990 SC 2228

[3] AIR 1989 Bombay 213

[4] AIR 1990 SC 371

[5] AIR 1989 SC 111

[6] AIR 2000 SC 3299

[7] AIR 2002 SC 2498

[8] AIR 1998 SC 1477

[9] AIR 1993 SC 1236

[10] AIR 1991 SC 1286

[11] AIR 1997 SC 1628

[12] AIR 1998 SC 101

[13] 1987 Suppl. SCC 497

[14] (1990)2 SCC 396

[15] AIR 1991 SC 295

[16] AIR 1981 SC 41

[17] (2001) 5 SCC 486

[18] (1997) 6 SCC 365

[19] (1999)7 SCC 120

[20] AIR 1987 SC 2034

[21] (2002)1 SCC 428

[22] (1994)2 SCC 630

[23] (1997)1 SCC 350

[24] (2003)3 SCC 485

[25] (1980)2 SCC 768

[26] (2004)1 SCC 663

[27] (2003)5 SCC 437

[28] AIR 1995 SC 705

[29] AIR 1991 SC 1260